

**2003-04 Statutes updated through February 1, 2005**

**109.075 Cessation of health care benefits affecting employees, retirees and dependents; advance notice required.**

**(1)** In this section:

- (a) "Affected employee, retiree or dependent" means an employee, retired employee or a surviving covered dependent of an employee or retired employee who loses, or may reasonably be expected to lose, his or her health care benefits provided by an employer who is required to give notice under sub. (2) because the employer has decided to cease providing health care benefits.
- (b) "Employee benefit plan" means a plan as defined in 29 USC 1002 (3).
- (c) "Employer" means any business enterprise that employs 50 or more persons in this state.
- (d) "Health care benefits" means coverage of health care expenses under an employee benefit plan.

**(2)** Subject to sub. (5) or (6), an employer who has decided to cease providing health care benefits in this state shall promptly notify any affected employee, retiree or dependent and any collective bargaining representative of any affected employee, retiree or dependent in writing of such action no later than 60 days prior to the date that the cessation of health care benefits takes place. This subsection does not apply to a cessation of health care benefits that is caused by a strike or lockout.

**(3)**

- (a) If an employer fails to give timely notice to an affected employee, retiree or dependent as required under sub. (2), the affected employee, retiree or dependent may recover, as provided under sub. (4), the value of any health care benefits that the affected employee, retiree or dependent would have received during the recovery period described under par. (c), but did not receive because of the cessation of health care benefits, including the cost of any medical treatment incurred that would have been covered but for the cessation of health care benefits.
- (b) The amount that an affected employee may recover under par. (a) shall be reduced by any cost that the affected employer incurs by crediting the affected employee, under an employee benefit plan, for time not actually served because of a business closing, as defined in s. 109.07 (1) (b), or mass layoff, as defined in s. 109.07 (1) (f).
- (c) The recovery period under par. (a) begins on the day that the cessation of health care benefits occurs. The recovery period equals the number of days in the period beginning on the day on which an employer is required to give notice under sub. (2) and ending on whichever of the following occurs first:
  - 1. The day that the employer actually gave the notice to the affected employee, retiree or dependent.
  - 2. The day that the cessation of health care benefits occurred.

**(4)**

- (a) An affected employee, retiree or dependent whose employer or former employer, or whose spouse's or parent's employer or former employer, fails to notify timely the affected employee, retiree or dependent under sub. (2) may file a claim with the department. If the affected employee, retiree or dependent files a claim with the department no later than 300 days after the cessation of health care benefits occurred, the department shall, in the manner provided in s. 109.09, investigate the claim, determine the number of days that the employer or former employer was late in providing notice and, on behalf of the affected employee, retiree or dependent, attempt to recover from the employer or former employer the payment under sub. (3).
- (b) If the department does not recover payment within 180 days after a claim is filed or within 30 days after it notifies the affected employee, retiree or dependent of its determination under par. (a), whichever is first, the department shall refer the claim to the department of justice. The department of justice may bring an action in circuit court on behalf of the affected employee, retiree or dependent to recover the payment under sub. (3).
- (c) If the department of justice does not bring an action under par. (b) within 120 days after the claim is referred to it, the affected employee, retiree or dependent may bring an action in circuit court to recover the payment under sub. (3). If the affected employee, retiree or dependent prevails in the action, he or she shall also recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(d) An action under this section shall be begun within one year after the department refers the claim to the department of justice under par. (b), or be barred.

**(5)**

(a) An employer is not liable under this section for a failure to give notice to any person under sub. (2), if the department determines all of the following:

1. When the notice under sub. (2) would have been timely given, that the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the cessation of health care benefits.

2. That the employer reasonably and in good faith believed that giving the notice required under sub. (2) would have prevented the employer from obtaining the capital or business.

(b) The department may not determine that an employer was actively seeking capital or business under par.

(a) 1. unless the employer has a written record, made while the employer was seeking capital or business, of those activities. The record shall consist of the documents and other material specified by the department by rule under s. 109.12 (1) (b). The employer shall have individual documents in the record notarized, as required by the department's rules. The employer shall provide the department with an affidavit verifying the content of the notarized documents.

**(6)** An employer is not liable under this section for a failure to give notice to any person under sub. (2), if the department determines that the cessation of health care benefits is the result of any of the following:

(a) The sale of part or all of the employer's business, if the purchaser agrees in writing, as part of the purchase agreement, to provide health care benefits for all of the affected employees, retirees and dependents with not more than a 60-day break in coverage.

(b) Business circumstances that were not foreseeable when the notice would have been timely given.

(c) A natural or man-made disaster beyond the control of the employer.

(d) A temporary cessation in providing health care benefits, if the employer renews providing health care benefits for the affected employees, retirees and dependents on or before the 60th day beginning after the cessation.

**(7)** Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth the rights of employees, retirees and dependents under this section. Any employer who violates this subsection shall forfeit not more than \$100.

**(8)** Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**History:** 1997 a. 237.

**Questions should be directed to:**

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